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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-348

No. COA20-855

Filed 17 May 2022

Pasquotank County, No. 17 CVD 719

JASON FIELDS, Plaintiff,

v.

VERONICA FIELDS, Defendant.

Appeal by Plaintiff from order entered 21 August 2020 by Judge Meader W. Harriss, III, in Pasquotank County District Court. Heard in the Court of Appeals 8 June 2021.

The Law Office of Timothy P. Koller, PLLC, by Timothy P. Koller, for plaintiff-appellant.

Pritchett & Burch, PLLC, by Lloyd C. Smith, III, for defendant-appellee.

MURPHY, Judge.

¶ 1 Where a trial court considers an issue in an initial custody determination, that issue cannot later be used to conclude that a substantial change in circumstances justifying a change in child custody has occurred. Additionally, where substantial evidence supports the findings of fact in a child custody modification order, we treat them as binding. Finally, where the findings of fact, in turn, support the trial court's

conclusions of law such that the trial court did not abuse its discretion, we will uphold a trial court's finding that a substantial change in circumstances occurred.

¶ 2 Here, the trial court did not improperly consider information in the custody modification order where that information was presented in the initial custody determination. Additionally, all challenged findings of fact were supported by substantial evidence, and the trial court did not abuse its discretion in concluding that a substantial change in circumstances had occurred based on the findings of fact. We affirm.

BACKGROUND

¶ 3 Plaintiff John Fields ("Father") and Defendant Veronica Fields ("Mother") married in 2008 and lived together as husband and wife until they separated in 2017. They share one child, born in July 2011, and both are members of the United States Coast Guard.

¶ 4 Father obtained a judgment of absolute divorce against Mother on 20 August 2018. On 28 January 2019, pursuant to N.C.G.S. § 50-13.7, the Pasquotank County District Court entered an order ("2019 Custody Order") stipulating that the parties would share joint legal and physical custody of their child and laying out various terms pertaining to the scheduling of their shared custody arrangement. The relevant terms of the 2019 Custody Order state:

> 1. [Mother and Father] shall share joint legal custody of the

minor child and it is in the best interest of the minor child for her physical custody to be jointly shared between the parties. The shared custody schedule shall be as follows:

a. Time will be spent as equally as possible, spending two consecutive weeks with each party. However, [Mother's] address shall be used for residency and school purposes, as the primary address of the minor child. In the event [Mother] relocates out of the Elizabeth City area in the school district where the child is currently enrolled, the parties presume that the child's residence shall change to [Father's] address.

b. During the school year: The exchange will take place on Mondays. The receiving party will be responsible for picking her up from school. If that Monday is a holiday or no school is in session, the receiving party will pick her up from the other party's house at 4:00 p.m.

c. During the summer: The exchange will take place on Mondays. The receiving party will be responsible for picking her up from Day Care/Summer Camp. If no Day Care/Summer Camp is scheduled, the receiving party will pick her up from the other party's house at 4:00 p.m.

d. If a military deployment is scheduled during the party's normally scheduled time: the deployed party has the option to make-up . . . missed custody time due to deployment up to 21 days. For [longer] deployments . . . the make-up time will not exceed 21 days. Make-up time for deployments will be added on to the party's regularly scheduled time 7 days at a time. . . . This allows three three-week visitations to make up for missed time with the child but does not allow the child to go for more than three weeks without seeing the other party.

. . . .

h. Holidays will be shared between the parties [as follows:]

> (i) The [] child's birthday shall be alternated, with [Mother] having the child in odd numbered years from 9:00 a.m. to 8:00 p.m. [and Father] having the child in even numbered years from 9:00 a.m. to 8:00 p.m.
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> (ii) [Mother's] birthday shall be spent with [Mother] from the time school is released until 8:00 p.m., or if school is not in session, from 9:00 a.m. until 8:00 p.m.
>
> (iii) [Father's] birthday shall be spent with [Father] from the time school is released until 8:00 p.m., or if school is not in session, from 9:00 a.m. until 8:00 p.m.
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> (iv) Mother's Day shall be spent with Mother, from 9:00 a.m. until 8:00 p.m.
>
> (v) Father's Day shall be spent with [Father] from 9:00 a.m. until 8:00 p.m.
>
> . . . .
>
> (vii) Christmas will be alternated and split into two parts. Part 1 begins the day school is released at 4:00 p.m. and ends on Christmas Day at 12:00 p.m. Part 2 begins Christmas Day at 12:00 p.m. and ends the day before school resumes at 4:00 p.m. In even number years, [Father] will have the minor child for Part 1, and [Mother] will have the minor child for Part 2. In odd number years [Mother] will have the minor child for Part 1 and [Father] will have the minor child for Part 2.
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> . . . .
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> 25. The parties shall attend joint counseling for co-parenting and family therapy . . . .

At the time of the 2019 Custody Order, both parties lived in Pasquotank County with residential addresses located within the district of their child's elementary school in Elizabeth City. However, by December 2019, Father had moved to Chesapeake,

Virginia; and, on 19 February 2020, Mother officially received permanent change of station ("PCS") orders to transfer from Elizabeth City to New Orleans, Louisiana.[1]

¶ 5 On 13 April 2020, Mother filed a *Motion for Modification of Child Custody*, citing a substantial change in circumstances affecting the welfare of the parties' child and asserting it would be in the child's best interest to be placed in her sole physical custody. As to the substantial change in circumstances, Mother's *Motion for Modification of Child Custody* asserted that, following her impending relocation to New Orleans, the shared custody arrangement contemplated in the 2019 Custody Order would no longer be feasible.

¶ 6 The trial court bifurcated proceedings, holding one hearing on 14 July 2020 as to the issue of a substantial change in circumstances and another hearing on 21 July 2020 as to the issue of the child's best interest. At the close of Mother's evidence on 14 July 2020, Father moved to dismiss, and the trial court denied the motion. On 21 August 2020, the trial court entered an *Order for Modification of Child Custody* ("Custody Modification Order"), listing the following relevant general findings:

> 1. [Father] is a citizen and resident of . . . Chesapeake, Virginia, since December 2019. Prior to moving to Chesapeake [Father had] resided in Pasquotank County . .

[1] Mother testified she began negotiations for PCS orders in November 2019, but did not know of her transfer to New Orleans until February 2020. She further testified that, prior to learning of her transfer to New Orleans, she was told her orders would possibly be to transfer to a different center in Elizabeth City.

> . since 2010.
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> . . . .
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> 2. [Mother] is a citizen and resident of Pasquotank County[.] [She] is an active duty member of the . . . [Coast Guard] stationed at Coast Guard Air Station [in] Elizabeth City[.] [She] has resided here since the birth of the . . . [c]hild, and now has impending . . . []PCS[] orders . . . to transfer to New Orleans, Louisiana to be promoted to the Rank of Command Master Chief (E-9), the highest level of Enlisted Rank.
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> . . . .
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> 5. This Court entered a custody [o]rder by consent of the parties on [28 January 2019.]

The Custody Modification Order also listed, *inter alia*, the following "Findings as to Substantial Changes in Circumstances":

> 8. [S]ince the entry of the 2019 Custody Order the parties have exercised the provisions contained therein, albeit with difficulty due to poor communication between them which existed at the time of the entry of the 2019 Custody Order.
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> . . . .
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> 11. That in December of 2019, [Father] moved to Chesapeake, Virginia following his remarriage and signed a one-year lease and provided forty-eight (48) hours' notice to [Mother] of his move, which caused a dispute regarding interpretation of the 2019 Custody Order. At the time, this move had no impact on the education of the child because [Father] transported the child to and from school in Elizabeth City.
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> 12. [Mother] would receive promotion to E-9, Command

Master Chief, if she accepted new change of station orders with the United States Coast Guard in December of 2019. She received official notification of her transfer from Elizabeth City . . . to New Orleans, Louisiana [on 19 February 2020], which was subsequently extended twice (2) to allow this custody proceeding to finalize before she transferred.

13. [Father's] move to Chesapeake[] [] in and of itself did not affect the schooling or general life of the minor child. However, [Father's] move coupled with [Mother's] promotion and move affects every aspect of the child because she is being completely uprooted from what she has known.

14. [S]ince the entry of [the 2019 Custody Order] the [m]inor [c]hild has attended school regularly at Central Elementary School in Elizabeth City until the beginning of the COVID-19 pandemic when they shifted to an online education format.

15. Since the institution of this action, Law Enforcement and the Pasquotank County Department of Social Services has been contacted at least once, and the Coast Guard initiated a Family Advocacy Program (FAP) investigation of [Mother] and the minor child.

16. The [c]ourt finds that [Father's] move coupled with [Mother's] PCS relocation from Elizabeth City constitutes a change in circumstances due to the difficulty it will present in following the current visitation schedule and rotation and that the distance affects the welfare of the [m]inor [c]hild.

17. Although short-term deployments were contemplated in the 2019 [C]ustody Order, duty station transfers were not contemplated. Further, some holidays such as . . . birthdays and Mother's/Father's Day were detailed in the 2019 [C]ustody Order in such a way that the parties' close living proximity was presumed.

> 18. Further, the [c]ourt finds that there is a significant change in circumstances that directly affects the welfare of the [child] in that her custodial arrangement due to [Mother's] impending relocation . . . is significantly impaired by said relocation and needs modification to establish a custodial plan for [the child's] future.

Finally, the Custody Modification Order listed the following conclusions of law:

> 1. The facts as set forth in paragraphs 1 through 49 are fully incorporated herein by reference to the extent that they are also conclusions of law.
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> . . . .
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> 4. There has been a substantial change in circumstances affecting the minor child warranting modification of the prior custody order pursuant to N.C.G.S. § 50-13.7.
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> 5. [I]t is in the [b]est [i]nterest of . . . [the child] that her sole physical care and custody be awarded to . . . [Mother] with the parties sharing joint legal custody of . . . [the child] pursuant to N.C.G.S. § 50-13.2.

Following these findings of fact and conclusions of law, the Custody Modification Order decreed "[Father] and [Mother] shall share joint legal custody of the [child], and it is in the best interest of the [child] for her primary physical custody to be granted to [Mother], subject to the [Father's] enumerated visitation herein."

¶ 7 Father timely appealed. On appeal, he requests we vacate the Custody Modification Order on the grounds that the trial court ruled on issues barred from its consideration due to prior disclosure; made findings of fact unsupported by substantial evidence; and, based upon those findings, erroneously concluded there

was a substantial change in circumstances warranting modification of the 2019 Custody Order.[2]

ANALYSIS

A. Findings of Fact

¶ 8 Father contends several of the trial court's findings of fact in the Custody Modification Order were unsupported by substantial evidence. "When reviewing a trial court's decision to grant or deny a motion for the modification of an existing child custody order, the appellate court[] must examine the trial court's findings of fact to determine whether they are supported by substantial evidence." *Shipman v. Shipman*, 357 N.C. 471, 474, 586 S.E.2d 250, 253 (2003). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Stephens v. Stephens*, 213 N.C. App. 495, 498, 715 S.E.2d 168, 171 (2011).

¶ 9 Father specifically contends Findings of Fact 12-18[3] "have no basis in

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[2] We note that Father's brief utilized the Courier or Courier New font, which is no longer in compliance with Rule 26(g)(1). *See* N.C. R. App. P. 26(g)(1) (2022). This change to the Appellate Rules was made effective as of 1 January 2017 by order of our Supreme Court dated 20 December 2016. *See Order Adopting the 2017 Rules of Appellate Procedure*, 369 N.C. 763, 829-830 (2016).

[3] Father also claims to challenge Findings of Fact 19-49 and Conclusions of Law 5-6, which pertain to the best interest of the child. It is unclear if he is simply attempting to challenge them as being "subsequent to the [trial] [c]ourt's conclusion of [a] substantial change in circumstances affecting the general welfare of the child . . . ." However, based upon the findings and conclusions he substantively challenges and discusses in his brief, the

substantial evidence on the Record, because there was almost no evidence presented . . . at all or that a reasonable mind could conclude would be 'substantial,'[4] and/or had any impact on the general welfare of the [c]hild." However, based on the following analysis, we conclude each of the challenged findings is supported by substantial evidence.

1. Finding of Fact 12

¶ 10 Finding of Fact 12 states:

> 12. [Mother] would receive promotion to E-9, Command Master Chief, if she accepted new change of station orders with the United States Coast Guard in December of 2019. She received official notification of her transfer from Elizabeth City . . . to New Orleans . . . [on 19 February 2020], which was subsequently extended twice (2) to allow this custody proceeding to finalize before she transferred.

Despite listing Finding of Fact 12 among the findings he contends are unsupported by substantial evidence, Father does not elaborate upon his challenge to this finding. Even setting aside Father's failure to advance an argument as to this finding, an

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entirety of Father's argument on appeal pertains to the issue of a substantial change in circumstances. In the event that Father intended to substantively challenge Findings of Fact 19-49 and Conclusions of Law 5-6, we hold this challenge is abandoned due to Father's failure to provide any supporting argument or legal basis for his challenge relevant to the best interest of the child. *See* N.C. R. App. P. 28(b)(6) (2022) (emphasis added) ("Issues not presented in a party's brief, *or in support of which no reason or argument is stated*, will be taken as abandoned.").

[4] We note that, contrary to Father's contention, "substantial evidence" is a term of art referring to the threshold of what a "reasonable mind might accept as *adequate*"—not, as Father contends, what a reasonable mind would accept as substantial in the colloquial sense. *Id.* (emphasis added).

examination of the Record reveals that—with the exception of one minor and inconsequential detail—there is substantial evidence to support Finding of Fact 12. First, Mother testified that, on 19 February 2020, she received PCS orders that were subsequently amended twice at her request for the purpose of finalizing the parties' custody dispute prior to relocating. Second, in his *Reply to Defendant's Motion to Modify Custody and Attorney Fees*, Father stated he "admits and acknowledges that [Mother] received PCS Orders to Louisiana for 1 July 2020" and that she was "being promoted to E-9 . . . Command Master Chief duty upon transfer[.]"

¶ 11 While the precise meaning of "in December of 2019" in Finding of Fact 12 is somewhat unclear, to the extent it indicates that Mother needed to accept PCS orders by that date, it is unsupported by evidence in the Record. While Father's *Motion for Modification of Custody* alleged Mother was "aware that she would be transferring [to New Orleans] in December 2019[,]" Mother specifically denied that allegation and stated she "was originally told on [27 January 2020] that she would be receiving orders to the C-28 APO office in Elizabeth City[.]" Neither party proffered testimony that could support Mother having to accept the PCS orders by December 2019, nor is there anything else to support it in the Record. Therefore, to the extent that this indication is contained in Finding of Fact 12, it is not binding on appeal. *See In re Anderson*, 151 N.C. App. 94, 97, 564 S.E.2d 599, 602 (2002) ("[T]he trial court's factual findings must be more than a recitation of allegations."); *Boone v. Boone*, 8 N.C. App.

524, 527, 174 S.E.2d 833, 834 (1970) (marks omitted) ("[A] finding [of fact] by the court[] which [] is not supported by [] evidence[] is not binding on appeal[.]").

¶ 12 With the exception of this minor detail, Mother's testimony and Father's admission constitute substantial evidence that "a reasonable mind might accept as adequate," *Stephens*, 213 N.C. App. at 498, 715 S.E.2d at 171, to support Finding of Fact 12.

2. Finding of Fact 13

¶ 13 Father next argues Finding of Fact 13 "is erroneous because . . . undisputed Finding [of Fact] 11 [states] that . . . [his] relocation had no effect on the welfare of the [c]hild" and the Record "contrarily indicates clearly that the [c]hild has a regular routine, . . . numerous friends, education established, a stable family, a suitable home, [and] multiple extracurricular activities . . . ." Findings of Fact 11 and 13 state:

> 11. That in December of 2019 [Father] moved to Chesapeake, Virginia following his remarriage and signed a one-year lease and provided forty-eight (48) hours' notice to [Mother] of his move, which caused a dispute regarding interpretation of the 2019 Custody Order. At the time, this move *had no impact on the education of the child* because [Father] transported the child to and from school in Elizabeth City.
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> . . . .
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> 13. [Father's] move to Chesapeake[] [] in and of itself did not affect the schooling or general life of the minor child. However, [Father's] move coupled with [Mother's] promotion and move affects every aspect of the child

> because she is being completely uprooted from what she has known.

(Emphasis added). Father's argument appears to misconstrue the substance of Finding of Fact 11, which does not reference the child's welfare, but rather states that his move "had no impact on the education of the child . . . ." The portion of Finding of Fact 13 stating that Father's move "*in and of itself* did not affect the schooling" of the child, therefore, merely reiterates this assertion in Finding of Fact 11. (Emphasis added).

¶ 14 As to the remaining portion of Finding of Fact 13, there is substantial evidence in the Record to support that the child "is being completely uprooted from what she has known." Both parties' testimony confirmed that, as a result of Father's move and Mother's impending relocation, the child would no longer be able to attend the same elementary school in Elizabeth City. Furthermore, Findings of Fact 1 and 2 indicate that Father and Mother were living in Pasquotank County since at least the time of the child's birth in 2011, meaning that the child resided in Pasquotank County all her life until her parents each moved.

¶ 15 As to the shared custody arrangement under the 2019 Custody Order, Mother testified the parties would "not be able to maintain the . . . two-week rotation . . . [they] currently have" and confirmed that, upon learning of her PCS orders to New Orleans, she had initially "suggest[ed] [the parties] change primary custody every

two years." Father's testimony suggests that the parties would not be able to maintain their custody arrangement under the 2019 Custody Order. Father's attorney asked Father "with regard[] to a substantial change in circumstances, if the [c]ourt were [to] say [the 2019 Custody Order has] to stay in place, how would you make visitation work?" Father responded by suggesting the child could visit her Mother for "two to three weeks" out of each 18-week period of the proposed online school program. Lastly, Father's testimony establishes that, since the 2019 Custody Order, he has remarried and "now ha[s] a large[,] blended family." Collectively, this testimony suffices as evidence that "a reasonable mind might accept as adequate," *Stephens*, 213 N.C. App. at 498, 715 S.E.2d at 171, to support Finding of Fact 13's assertion that the child "is being completely uprooted from what she has known."

3. Finding of Fact 14

¶ 16 Father also challenges Finding of Fact 14, which states:

> 14. [S]ince the entry of the [2019 Custody Order], the [m]inor [c]hild has attended school regularly at Central Elementary School in Elizabeth City until the beginning of the COVID-19 pandemic when they shifted to an online education format.

Father asserts Finding of Fact 14 is unsupported because the "evidence clearly indicate[s] . . . the [c]hild . . . [transitioned to] remote learning due to COVID-19 in March[,] remained there[,] and successfully completed her grade level . . . ." He additionally claims there was "no [] evidence [] showing any impact that the

transition . . . had on the [child's] general welfare . . . ." Though Father attempts to dispute Finding of Fact 14, he does not actually present a challenge to any of its contents and has therefore abandoned any argument pertaining to the substance of Finding of Fact 14. *See* N.C. R. App. P. 28(b)(6) (2022).

¶ 17 Even if Father's challenge to this finding was not abandoned due to his general challenge to the findings of fact—that Findings of Fact 12-18 lack substantial evidence to support them—Finding of Fact 14 is supported by substantial evidence in the Record. Mother's undisputed testimony that at the time of the "pandemic lockdown . . . [the child] went into a virtual learning environment" constitutes substantial evidence that "a reasonable mind might accept as adequate," *Stephens*, 213 N.C. App. at 498, 715 S.E.2d at 171, to support Finding of Fact 14.

4. Finding of Fact 15

¶ 18 Finding of Fact 15, the next finding challenged by Father, states:

> 15. Since the institution of this action, Law Enforcement and the Pasquotank County Department of Social Services has been contacted at least once, and the Coast Guard initiated a Family Advocacy Program (FAP) investigation of [Mother] and the minor child.

Father asserts this finding is not supported by substantial evidence because "the [R]ecord in this case clearly demonstrates that there was no involvement of the Pasquotank County Department of Social Services." However, Father's own *Reply to Defendant's Motion to Modify Custody* concedes that he "contacted Pasquotank

County Central Communications and was referred to Pasquotank County DSS, then back to Central Communications . . . ." This admission by Father constitutes evidence in the Record that "a reasonable mind might accept as adequate," *Stephens*, 213 N.C. App. at 498, 715 S.E.2d at 171, to support the challenged portion of Finding of Fact 15.

5. Finding of Fact 16

¶ 19 Father also challenges Finding of Fact 16, which states:

> 16. The [c]ourt finds that [Father's] move coupled with [Mother's] PCS relocation from Elizabeth City constitutes a change in circumstances due to the difficulty it will present in following the current visitation schedule and rotation and that the distance affects the welfare of the [m]inor [c]hild.

We note that the portion of this "finding of fact" that determines whether a change in circumstance occurred is actually a conclusion of law. *See Wachacha v. Wachacha*, 38 N.C. App. 504, 507, 248 S.E.2d 375, 377 (1978) ("What is designated by the trial court as a finding of fact[] [] will be treated on review as a conclusion of law if essentially of that character."); *Kolczak v. Johnson*, 260 N.C. App. 208, 223, 817 S.E.2d 861, 870-71 (2018) ("A trial court's determination that there has been a substantial change in circumstances affecting . . . the child[] is a conclusion of law[.]"). The portion of this finding of fact that is a conclusion of law is coextensive with Conclusion of Law 4, and we discuss it in Part B-2 below.

¶ 20 Turning to the remainder of the finding, Father argues that Finding of Fact 16 is entirely based on the argument presented by Mother's trial counsel rather than any evidence presented and, as a result, is not supported by substantial evidence. However, as previously noted, both parties' testimony confirmed that the custodial schedule under the 2019 Custody Order would no longer be feasible in light of Father's move and Mother's impending move. This demonstrates the Record contained evidence "a reasonable mind might accept as adequate," *Stephens*, 213 N.C. App. at 498, 715 S.E.2d at 171, to support the factual determination contained in Finding of Fact 16 that the parties' coupled relocation would present difficulties for the current visitation schedule.

6. Finding of Fact 17

¶ 21 The next challenged finding, Finding of Fact 17, states:

> 17. Although short-term deployments were contemplated in the 2019 [C]ustody Order, duty station transfers were not contemplated. Further, some holidays such as the parties' birthdays and Mother's/Father's Day were detailed in the 2019 [C]ustody Order in such a way that the parties' close living proximity was presumed.

Father lists Finding of Fact 17 as among the challenged findings that are "not based upon any competent evidence" and additionally asserts this finding "was barred by *[r]es [j]udicata* as a matter of law." While Father does not further elaborate upon this *res judicata* claim pertaining to Finding of Fact 17, it is without merit. A trial court

is not barred from referencing provisions under a prior order when analyzing whether a substantial change in circumstances occurred, and a scheduling provision in a prior order does not constitute "information previously disclosed to the [trial] court prior to the hearing on the motion to modify custody . . . ." *Peeler v. Joseph*, 263 N.C. App. 198, 201, 823 S.E.2d 155, 158 (2018).

¶ 22 Finding of Fact 17 reflects the trial court's interpretation of the 2019 Custody Order's provisions pertaining to "military deployment[s]" of fewer or greater than 21 days and Mother "relocat[ing] out of the Elizabeth City area in the school district where the child is currently enrolled[.]"

¶ 23 "A custody agreement is a contract[.]" *Peters v. Pennington*, 210 N.C. App. 1, 14. 707 S.E.2d 724, 734 (2011). In interpreting a contract, it is well settled that a court must "presume[] the parties intended what the language clearly expresses, and [that a provision] must be construed to mean what on its face it purports to mean." *McIntyre v. McIntyre*, 188 N.C. App. 26, 31, 654 S.E.2d 798, 801, *aff'd per curiam*, 362 N.C. 503, 666 S.E.2d 749 (2008).

> Interpreting a contract requires the court to examine the language of the contract itself for indications of the parties' intent at the moment of execution. If the plain language of a contract is clear, the intention of the parties is inferred from the words of the contract. A consent judgment is a court-approved contract subject to the rules of contract interpretation. Intent is derived not from a particular contractual term but from the contract as a whole. Since the object of construction is to ascertain the intent of the

> parties, the contract must be considered as an entirety. The problem is not what the separate parts mean, but what the contract means when considered as a whole.

State v. Philip Morris USA Inc., 363 N.C. 623, 631-32, 685 S.E.2d 85, 90 (2009) (marks and citations omitted).

¶ 24 Here, the language of the provision pertaining to military deployments stated:

> If a military deployment is scheduled during the party's normally scheduled time: the deployed party has the option to make-up . . . missed custody time due to deployment up to 21 days. For [longer] deployments . . . the make-up time will not exceed 21 days. Make-up time for deployments will be added on to the party's regularly scheduled time 7 days at a time. . . . This allows three three-week visitations to make up for missed time with the child but does not allow the child to go for more than three weeks without seeing the other party.

This provision is "plain and unambiguous" in that it specifically relates to military deployments of greater or fewer than 21 days. As a result, the trial court was obligated to "construe [the provision] as written" and could not "insert [words] into [it.]" *Minor v. Minor*, 70 N.C. App. 76, 79, 318 S.E.2d 865, 867, *disc. rev. denied*, 312 N.C. 495, 322 S.E.2d 558 (1984). To interpret this provision by inserting the words "duty station transfer" into it would contravene this principle of contractual interpretation. The trial court properly determined the provision related only to deployments in accordance with what its "language clearly expresses." *McIntyre*, 188 N.C. App. at 31, 654 S.E.2d at 801.

¶ 25 Furthermore, the provision contemplating Mother's possible relocation states:

> However, [Mother's] address shall be used for residency and school purposes, as the primary address of the minor child. In the event [Mother] relocates out of the Elizabeth City area in the school district where the child is currently enrolled, the parties presume that the child's residence shall change to [Father's] address.

We assume, without deciding, that Mother's duty station transfers were contemplated by the above provision from the 2019 Custody Order, and assume, without deciding, that the trial court erred in finding duty station transfers were not considered in the 2019 Custody Order. However, for the reasons discussed in Part B-2, this portion of Finding of Fact 17 being unsupported is immaterial to the Custody Modification Order.

¶ 26 Finally, the 2019 Custody Order's provisions pertaining to the scheduling of holidays, as the trial court states, presumes the parties were living in close proximity. For example, the 2019 Custody Order decrees that "Mother's Day shall be spent with Mother, from 9:00 a.m. to 8:00 p.m." and "Christmas will be alternated and split into two parts. Part 1 begins the day school is released at 4:00 p.m. and ends on Christmas Day at 12:00 p.m. Part 2 begins Christmas Day at 12:00 p.m. and ends the day before school resumes at 4:00 p.m." Provisions of this type are provided for holidays throughout the year, such that compliance with them would be rendered an impracticability, if not a physical impossibility, in the event that Mother and Father

did not live in close proximity. In sum, there was evidence "a reasonable mind might accept as adequate," *Stephens*, 213 N.C. App. at 498, 715 S.E.2d at 171, to support Finding of Fact 17, with the exception of whether the 2019 Custody Order contemplated duty station transfers, which we assume, without deciding, was unsupported by substantial evidence and is non-binding on appeal.

7. Finding of Fact 18

¶ 27 Father lastly challenges Finding of Fact 18, which states:

> 18. Further, the [c]ourt finds that there is a significant change in circumstances that directly affects the welfare of the [child] in that her custodial arrangement due to [Mother's] impending relocation . . . is significantly impaired by said relocation and needs modification to establish a custodial plan for [the child's] future.

We note that Finding of Fact 18, to the extent it determines whether a substantial change in circumstances occurred, is partially a conclusion of law. *See Wachacha*, 38 N.C. App. at 507, 248 S.E.2d at 377; *Kolczak*, 260 N.C. App. at 223, 817 S.E.2d at 870-71. The portion of this finding of fact that is a conclusion of law is coextensive with Conclusion of Law 4 and is discussed in Part B-2 below.

¶ 28 Turning to the remainder of this finding of fact, Father contends Finding of Fact 18 is not supported by substantial evidence. However, Finding of Fact 18's assertion that the current custodial arrangement was impaired by Mother's impending relocation and required modification was supported by the testimony of

both parties, as discussed in relation to Finding of Fact 13. There was evidence "a reasonable mind might accept as adequate," *Stephens*, 213 N.C. App. at 498, 715 S.E.2d at 171, to support this factual finding contained in Finding of Fact 18.

8. Conclusion on Findings of Fact

¶ 29 Where a reviewing court "conclude[s] there is substantial evidence in the record to support the trial court's findings of fact, such findings are conclusive on appeal, even if record evidence might sustain findings to the contrary." *Shipman*, 357 N.C. at 475, 586 S.E.2d at 253-54. For the foregoing reasons, with the exception of the previously mentioned portion of Finding of Fact 12 and our assumption, without deciding, that a portion of Finding of Fact 17 is unsupported by substantial evidence, we hold the trial court's findings of fact are supported by substantial evidence in the Record that "a reasonable mind might accept as adequate" and, as a result, are binding on appeal. *Stephens*, 213 N.C. App. at 498, 715 S.E.2d at 171.

B. Conclusions of Law

¶ 30 Father also challenges Conclusions of Law 1 and 4 as erroneous. "In addition to evaluating whether a trial court's findings of fact are supported by substantial evidence, [appellate courts] must determine if the trial court's factual findings support its conclusions of law." *Shipman*. 357 N.C. at 475, 586 S.E.2d at 254. "Absent an abuse of discretion, the trial court's decision in matters of child custody should not be upset on appeal." *Everette v. Collins*, 176 N.C. App. 168, 171, 625 S.E.2d 796, 798

(2006).

1. Conclusion of Law 1

¶ 31 Conclusion of Law 1 states:

> 1. The facts set forth in paragraphs 1 through 49 are fully incorporated herein by reference to the extent that they are also conclusions of law.

Father contends Conclusion of Law 1 is erroneous "because the [trial] [c]ourt cannot incorporate 'all' of its findings to support all of its conclusions by its own order[,]" as the hearing was bifurcated and the trial court could not consider evidence from the second phase, which related to the best interest of the child, in the first phase, which related to whether there was a substantial change in circumstances. We believe Father misunderstands Conclusion of Law 1.

¶ 32 Rather than stating that all of the findings of fact support all of the conclusions of law, as suggested by Father, Conclusion of Law 1 indicates that any finding of fact made by the trial court that is more properly characterized as a conclusion of law is included, by reference, in the conclusion of law section. This is an often-used shorthand by the trial courts to express the concept from *Wachacha*, as discussed above at ¶ 19. *See Wachacha*, 38 N.C. App. at 507, 248 S.E.2d at 377. There is no suggestion in Conclusion of Law 1, or anywhere else, that the trial court improperly considered evidence from the best interests of the child phase of the hearing in determining whether a substantial change in circumstances occurred. In light of

Father's misreading of Conclusion of Law 1, we find Father's challenge to Conclusion of Law 1 unpersuasive.

2. Conclusion of Law 4

¶ 33 Conclusion of Law 4 states:

> 4. There has been a substantial change in circumstances affecting the minor child warranting modification of the prior custody order pursuant to N.C.G.S. § 50-13.7.

Father contends the findings of fact do not support Conclusion of Law 4, in large part based upon his challenges to Findings of Fact 12-18. However, except for our assumption that a portion of Finding of Fact 17 is unsupported by substantial evidence and our holding that a portion of Finding of Fact 12 is unsupported by substantial evidence, all of the findings of fact are binding on us. *See Shipman*, 357 N.C. at 475, 586 S.E.2d at 253-54. Father also contends that the trial court erroneously relied on conditions antecedent to the 2019 Custody Order—specifically, poor communication between the parties and frustration of its visitation provisions due to Mother's impending relocation—because issues known prior to the entry of the 2019 Custody Order could not qualify as a change in circumstances. Even assuming, without deciding, that the trial court had previously considered Mother's potential move and it was barred from considering the impact of her move alone on a substantial change of circumstances, we hold that the findings of fact support the conclusion that there was a substantial change in circumstances warranting

modification of the 2019 Custody Order.[5]

¶ 34 "The reason . . . there must be a change of circumstances before a custody decree can be modified is to prevent relitigation of conduct and circumstances that antedate the prior custody order[.]" *Peeler*, 263 N.C. App. at 201, 823 S.E.2d at 158 (marks and citation omitted). "[W]hen evaluating whether there has been a substantial change in circumstances, courts may only consider events which occurred after the entry of the previous order, unless the events were previously undisclosed to the court." *Woodring v. Woodring*, 227 N.C. App. 638, 645, 745 S.E.2d 13, 20 (2013) (marks and citation omitted).

¶ 35 Mother concedes the condition of poor communication between the parties existed prior to, and at time of, the 2019 Custody Order. However, while it is undisputed by the parties that the condition of poor communication predated the 2019 Custody Order, neither the Record as a whole nor the findings of fact cited by Father demonstrate that the trial court based its determination regarding a substantial change in circumstances upon that condition.[6] *See Peeler*, 263 N.C. App.

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[5] As noted earlier, the portions of Findings of Fact 16 and 18 that involve a determination that a substantial change of circumstances occurred are conclusions of law. This conclusion and the following analysis apply with equal force to these portions of Findings of Fact 16 and 18.

[6] Father contends the trial court improperly relied on the condition of poor communication in concluding there was a substantial change in circumstances. In doing so, he seemingly limits his argument to Findings of Fact 8-11. These findings of fact, however, lend no support to Father's contention. Finding of Fact 8 explicitly acknowledges the

at 202, 823 S.E.2d at 159 ("There is no evidence in the record that the trial court considered the [condition of the child] . . . when drafting the [custody] order."). Given that the Record provides no indication that the trial court relied upon the condition of poor communication in its conclusion that there had been a substantial change in circumstances, we conclude Father's challenge pertaining to poor communication is unpersuasive.

¶ 36 Father also asserts the trial court was barred from considering the effects of Mother's relocation. He bases this argument in part upon Findings of Fact 16-18; however, these findings make clear that the trial court considered the parties' *coupled* relocations in its conclusion that there had been a substantial change in circumstances. Father argues that its consideration was improper on the ground that the 2019 Custody Order "made numerous provisions to deal with future issues known to [the parties] and the court at the time of its entry, including [Mother's] future relocation." In support, he specifically cites to a provision from the 2019 Custody Order stating "[i]n the event [Mother] relocates out of the Elizabeth City area in the

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condition of "poor communication existed between [the parties] at the time" the 2019 Custody Order was entered, while Findings of Fact 9-11 make no mention of poor communication whatsoever. None of these findings demonstrate that the trial court based its conclusion that there had been a substantial change in circumstances upon the condition of poor communication between the parties. Furthermore, even an examination of the entire Record yields no support for Father's argument. Notably, Findings of Fact 16 and 18, which discuss a substantial change in circumstances, make no mention of poor communication, instead referencing only relocation as a condition warranting "modification of the prior custody order."

school district where the child is currently enrolled, the parties presume that the child's residence shall change to [Father's] address."

¶ 37 Even assuming, *arguendo*, the 2019 Custody Order contemplated Mother's future relocation, Mother testified that, at the time of the 2019 Custody Order, there was no indication Father would move out of Elizabeth City. This undisputed testimony and the plain terms of the 2019 Custody Order demonstrate the 2019 Custody Order did not contemplate the present factual circumstance: the coupled relocation of both parties, with Father's move to Chesapeake and Mother's impending relocation to New Orleans.

¶ 38 It is well established that, where "facts pertinent to the custody issue were not disclosed to the court at the time the original custody decree was rendered, . . . a prior decree is not res judicata as to those facts not before the court." *Newsome v. Newsome*, 42 N.C. App. 416, 425, 256 S.E.2d 849, 854 (1979). Mother's official, impending relocation to New Orleans,[7] coupled with Father's move to Chesapeake—conditions pertinent to the issue of custody—fall within "those facts not before the court" at the time of the 2019 Custody Order when taken together. *Id*. The parties' coupled relocations were not barred from the trial court's consideration. As a result, we

[7] We note that Mother testified she began the process for transferring in November 2019, did not know of her assignment to New Orleans until February 2020, and, prior to learning of her transfer to New Orleans, was told her "orders could be to . . . [transfer to a] Training Center [] in Elizabeth City."

conclude Father's challenge to the trial court's consideration of the parties' relocations is also unpersuasive.

¶ 39 We have previously held that "a change in the custodial parent's residence is not itself a substantial change in circumstances affecting the welfare of the child which justifies a modification of a custody decree." *Evans v. Evans*, 138 N.C. App. 135, 140, 530 S.E.2d 576, 579 (2000); *see also Harrington v. Harrington*, 16 N.C. App. 628, 630, 192 S.E.2d 638, 639 (1972) (citations omitted) (holding the trial court erred in modifying custody of a child when "[t]he only finding of change in circumstances as to [the minor child] was that [the] defendant [had moved to] Mecklenburg County, North Carolina"). However, each of these cases involved *one* parent's move or plan to move. *Evans,* 138 N.C. App. at 136, 530 S.E.2d at 577 (involving a custodial parent who wanted to change custody related to a prospective move to Maryland); *Harrington*, 16 N.C. App. at 629, 192 S.E.2d at 638-39 (involving a non-custodial parent who wanted to change custody related to her moving back to Mecklenburg from New York).

¶ 40 Our Supreme Court has discussed how to evaluate whether a change in circumstances has occurred in such a setting, stating:

> In situations where the substantial change involves a discrete set of circumstances such as a move on the part of a parent . . . the effects of the change on the welfare of the child are not self-evident and therefore necessitate a showing of evidence *directly* linking the change to the

> welfare of the child. . . . Evidence linking these and other circumstances to the child's welfare might consist of assessments of the minor child's mental well-being by a qualified mental health professional, school records, or testimony from the child or the parent.

Shipman, 357 N.C. at 478, 586 S.E.2d at 256 (citations omitted). "[C]ourts must consider and weigh all evidence of changed circumstances which affect or will affect the best interests of the child, both changed circumstances which will have salutary effects upon the child and those which will have adverse effects upon the child." *Pulliam v. Smith*, 348 N.C. 616, 619, 501 S.E.2d 898, 899 (1998).

¶ 41 Although many previous cases have focused on the impact of a past move in evaluating whether a substantial change in circumstances has occurred, we have held:

> The [trial] court need not wait for any adverse effects on the child to manifest themselves before the court can alter custody. It is neither necessary nor desirable to wait until the child is actually harmed to make a change in custody. However, evidence of speculation or conjecture that a detrimental change may take place sometime in the future will not support a change in custody.

Evans, 138 N.C. App. at 140, 530 S.E.2d at 579 (citations omitted).

¶ 42 Here, the effects of the moves on the child were discussed by the trial court in its findings of facts. Father moved out of North Carolina and the school district where the child attended school. In and of itself, as stated by Finding of Fact 13, this move did not impact the child; Father was still close enough to comply with the terms of

the 2019 Custody Order, and the child could still attend the same school because Mother lived within the school district. However, the trial court's findings of fact establish that Father's move, *in conjunction with* Mother's move, assuming it was contemplated by the 2019 Custody Order, affected the child by creating a situation in which the child could no longer attend the same school, "the child [would be] completely uprooted from what she has known," and the visitation terms of the 2019 Custody Order could not be complied with. In light of these effects, we conclude the trial court did not abuse its discretion in concluding there was a substantial change in circumstances due to Father's move and Mother's impending relocation.

CONCLUSION

¶ 43 The challenged findings of fact in the Custody Modification Order are supported by substantial evidence. Furthermore, even assuming that Mother's prospective move was previously contemplated and could not be considered by the trial court, the findings of fact support the conclusion that the combination of Mother's impending relocation and Father's intervening move resulted in a substantial change of circumstances that affected the child's welfare. Accordingly, the trial court did not abuse its discretion in modifying the custody arrangement.

AFFIRMED.

Judges DIETZ and CARPENTER concur.

Report per Rule 30(e).